



## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Modification of Consent Decree Under The Clean Water Act and Oil Pollution Act

On October 12, 2022, the Department of Justice lodged with the United States District Court for the Western District of Michigan a proposed Seventh Modification of Consent Decree (“Seventh Modification”) in the lawsuit entitled *United States v. Enbridge Energy, Limited Partnership, et al.*, Civil Action No. 1:16-cv-914.

On May 23, 2017, the United States District Court for the Western District of Michigan approved and entered a Consent Decree that resolved specified claims asserted by the United States against Enbridge Energy, Limited Partnership and eight affiliated entities (“Enbridge”) under the Clean Water Act and Oil Pollution Act arising from two separate 2010 oil spills resulting from failures of Enbridge oil transmission pipelines near Marshall, Michigan and Romeoville, Illinois. The complaint filed by the United States alleged that Enbridge’s pipelines had unlawfully discharged oil into waters of the United States and sought civil penalties, recovery of removal costs, and injunctive relief. The Consent Decree established various requirements applicable to a network of 14 pipelines that comprise Enbridge’s Lakehead System -- including dig selection criteria governing excavation, repair or mitigation, and imposition of interim pressure restrictions for various features, such as dents, corrosion and cracks, that are detected through In-Line Inspections (“ILI”) of such pipelines. Because certain of these dig selection criteria are based in part on the Established Maximum Operating Pressure (“EMOP”) applicable to the pipeline location where the particular feature is located, the Consent Decree incorporated by reference EMOP values established for each of the pipelines subject to the Consent Decree.

The proposed Seventh Modification would revise provisions of the Consent Decree relating to four main areas. First, the proposed modification would establish requirements and

procedures under which Enbridge may seek Partial Termination of specified obligations under the Consent Decree while it remains subject to, and continues to implement, other Consent Decree requirements that are not eligible for Partial Termination. Second, the proposed Seventh Modification would explicitly designate specified pipeline segments on Line 61 and Line 62 as “Replacement Segments” that are subject to some additional leak detection system-related requirements under the Consent Decree. The Modification requires Enbridge to maintain existing temperature and pressure sensing instrumentation on the newly-designated Replacement Segments but clarifies that Enbridge is not required to install instrumentation on the newly designated Replacement Segments. Third, the proposed Seventh Modification establishes deadlines applicable to the resumption of In-Line Inspections (ILIs) on Line 62 following a long period when that pipeline was not in service. Finally, in light of information developed following the 2017 hydrostatic pressure tests on a segment of Line 5 that crosses the Straits of Mackinac (generally referred to as the “Dual Pipelines”), the proposed Seventh Modification would confirm that Enbridge will not be required to perform any axial crack ILI on the Dual Pipelines and associated piping prior to expiration of a time period that corresponds to one-half of the estimated remaining fatigue life of the worst potential axial Crack feature that could have survived the 2017 hydrostatic pressure tests. The Modification does not limit Enbridge’s ability to contend that an axial crack ILI is not required on the Dual Pipelines following expiration of the time period referred to above.

The publication of this notice opens a period for public comment on the proposed Seventh Modification of Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Enbridge Energy, Limited Partnership, et al.*, D.J. Ref. No. 90-5-1-1-10099. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by e-mail or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By e-mail	pubcomment-ees.enrd@usdoj.gov
By mail	Assistant Attorney General U.S. DOJ – ENRD P.O. Box 7611 Washington, D.C. 20044-7611

During the public comment period, the proposed Seventh Modification of Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. The Justice Department will provide a paper copy of the proposed Seventh Modification of Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library  
U.S. DOJ – ENRD  
P.O. Box 7611  
Washington, D.C. 20044-7611

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